South Carolina’s very weak laws related to medical peer review are antiquated, in conflict with nationally accepted best practices, and hamper current efforts to improve the quality and value of care delivered by South Carolina hospitals.

Background
As South Carolina hospitals continue to seek, test and share best practices for improving the quality and value of health care, no practice is more important than effective medical peer review. Peer review is a critical method used in hospitals to assess not only an individual caregiver’s performance in caring for a patient, but also the hospital’s clinical and procedural processes. Obviously, a faulty process will not be corrected unless it is studied for flaws, and no one will learn from mistakes made unless those mistakes are candidly discussed.

Effective peer review is not designed to judge and punish, but to improve and learn. Obviously, if the process identifies incompetence, negligence or impairment, immediate steps are taken to safeguard the hospital’s patients. Those steps can include requirements for more training or increased supervision, reduction or elimination of privileges to practice in the hospital, and even termination. Such actions are reported to the licensure board with jurisdiction over the person involved.

However, the majority of caregivers are skilled professionals who want to do the best job possible caring for their patients and want to make sure that effective backup systems are in place to reduce the risk of mistakes. Clinical and procedural processes are so important because they help to assure consistency and safeguard against human error.

While no one wants to allow substandard care to become accepted procedure, many caregivers do not look forward to participating in a candid discussion of what could have been done better. They are concerned that by speaking candidly they could ruin a colleague’s career or perhaps their own. That is why peer review must be a learning and improvement process instead of one that seeks to determine who to blame when something goes wrong. This is the reason it has long been accepted that in order to encourage candid discussion and participation, discussions that take place as an official part of the peer review process must be completely confidential. Recognizing this, most states have strong medical peer review statutes that protect and strengthen the process.

Legislative Improvements Advocated by South Carolina Hospitals
Unfortunately, South Carolina has a very weak peer review law, which is an obstacle to hospitals’ work to improve the quality of care and the value of care provided to our patients. In order to help promote the highest standards of quality care and safety for all of South Carolina’s citizens, the SCHA strongly supports the following actions be taken by the SC General Assembly.

1. Incorporate laws related to medical peer review under the hospital licensing chapter, Title 44 of the SC Code of Laws.
Currently, medical peer review provisions are addressed in Title 40 of the SC Code of Laws. This section of law covers a broad scope of professions and occupations such as accountants and cosmetologists. By incorporating medical peer review within Title 44, the hospital licensing chapter, the intent of the law will be less ambiguous and speak directly to health care providers and facilities, medical care and patient safety.

2. **Extend confidentiality of peer review records beyond the medical executive committee.**
   Current South Carolina law applies confidentiality protections to committees of the medical staff, which represent just one part of the peer review process. Full and candid quality of care review requires a team of professionals beyond just physicians in order to adequately assess the care provided to a patient and determine what can be learned and/or implemented to avoid similar problems in the future. If such reports are potentially subject to public disclosure, many critical players in the process (including physicians) will likely not participate with the candor necessary to make the process as meaningful as it must be.

3. **Extend the confidentiality protection to include records related to root cause analysis.**
   Root cause analysis is a process that allows healthcare professionals to meticulously examine the reason a mistake was made so policies, procedures, and processes can be corrected and improved. Because these analyses must involve people in many different positions at the hospital, South Carolina’s lack of privacy protection discourages hospitals from participating fully in them. In addition, many accrediting bodies, such as the Joint Commission, require hospitals to conduct root cause analysis, putting hospitals at odds with those nationally accepted standards. Amending South Carolina’s laws related to confidentiality of peer review and root cause analyses will bring our state and its hospitals in line with other states, as well as state and national organizations involved in efforts to ensure improved quality of care.

4. **Clarify who may waive the right of confidentiality.**
   The current South Carolina law is very ambiguous concerning who ‘owns’ the records produced during the peer review process and root cause analysis. It is equally ambiguous as to whether a physician or hospital can waive the right to confidentiality of those records. This must be clarified in law.

**Conclusion**

It is important to note that none of these recommendations protects health care providers from legal action, criminal or civil, nor do they change any legal requirements for hospitals to report incidents and accidents to DHEC, JCAHO or other accrediting bodies. The extension of privilege and confidentiality protections under these proposed changes are only for records generated as a result of the medical peer review process and root cause analysis.

These changes will, however, remove barriers to a best practice for improving health care in hospitals throughout the state, paving the way for higher quality and more valuable care for all South Carolinians.